

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 30, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 96-2657

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

**ONE 19__ HARLEY DAVIDSON FLH MOTORCYCLE,
BLACK IN COLOR, WISCONSIN LICENSE #D-HOG,
ENGINE NUMBER 19257276, AND ITS TOOLS AND
APPURTENANCES,**

DEFENDANT,

DUANE E. DEPIES,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL D. GUOLEE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Duane E. Depies appeals from an order for forfeiture and judgment requiring that Depies's motorcycle be forfeited to the City of Milwaukee Police Department in accordance with §§ 342.30(4)(a) and 973.076, STATS. Depies claims the trial court erred in ordering the forfeiture because the motorcycle had a proper Vehicle Identification Number and because the State failed to prove its case. Because the trial court did not err in ordering that the motorcycle be forfeited, we affirm.

I. BACKGROUND

On September 3, 1995, Milwaukee Police Detective Peter Simet was patrolling the area of Lincoln Avenue and South 5th Street in Milwaukee when he observed Depies riding what appeared to be a Harley Davidson motorcycle with the license plate "D HOG." Simet approached Depies and asked for his driver's license, which Depies could not produce because it was either revoked or suspended. When Simet ran a check on the license plate, he discovered that the vehicle identification number (VIN) assigned to the D HOG plate was supposed to be an STD engine, not a Harley Davidson. The VIN was 19257276. Simet testified that the registration that Depies produced did not match the make of the cycle. The registration indicated that the cycle was an STD, but Simet testified the cycle was actually a Harley Davidson.

Simet examined the motorcycle and observed that the frame number had been ground off, that the VIN number was hand-stamped on the engine case, which is not consistent with the manner in which STD puts on a number, and the number on the front fork assembly and the crank case had been welded over and ground off. In further examining the cycle, Simet noted that the numbers that had been obliterated were all in places that Harley Davidson puts identification

numbers. He also observed that the transmission appeared to be a Harley Davidson transmission, but the identification number on the transmission had been welded over and ground off. Simet also found that the cycle did not contain certain features that are utilized by STD, such as a raised STD emblem. He also found that two stickers required by federal law, one called a federal certification label and one for emission control, had been removed.

Based on all of these observations, Simet concluded that someone had gone to great lengths to remove from the cycle all numbers that could identify it. He testified that the only reason to remove these identifying numbers was to conceal a stolen vehicle. Simet indicated that as a result of his investigation, the motorcycle was seized and forfeiture proceedings were commenced.

In addition to Simet's testimony during the forfeiture proceedings, the trial court also heard testimony from Depies and Depies's witness, Kendall Thistle. Thistle testified that in 1982, he built the vehicle himself from parts he bought at various swap meets and from dealers. Thistle testified that after he had assembled the cycle, he took it to the Wisconsin State Patrol for inspection and that they issued him a serial number for a "homebuilt" motorcycle. Thistle personally stamped the number on the STD engine casing. Thistle did not produce any records of the purchases of the parts or records from the State Patrol. He also testified that he did not know that all of the identification numbers had been removed. Thistle testified that he registered the motorcycle with the Wisconsin Department of Transportation and received a VIN number, which he stamped on the STD engine casing. He also received a license and title.

Depies testified that he purchased the motorcycle from Thistle in 1992 and properly registered and obtained title to the vehicle through the DOT.

The title indicates the make of the vehicle as “homemade” and the VIN is 19257276. Depies testified that he was not aware that all of the identification numbers had been removed.

The trial court found Depies and Thistle’s testimony to be incredible. It found that Simet’s testimony was credible and that the State had satisfied its burden of proving that the motorcycle contained numerous unidentified parts, and that were therefore, presumed to be contraband. It further found that Depies failed to overcome this presumption. As a result, it concluded that the entire motorcycle was subject to forfeiture. The trial court ordered the motorcycle forfeited and judgment was entered. Depies now appeals.

II. DISCUSSION

Section 342.30(4)(a), STATS., provides:

If a law enforcement agency finds a vehicle or part of a vehicle on which the identification number has been removed, altered or obliterated or made impossible to read, the law enforcement agency may seize the vehicle or part of a vehicle. If the identification number cannot be identified, the seized vehicle or vehicle part is presumed to be contraband.

Depies claims that the VIN number is the “identification number” referred to in the statute and that because the VIN number was on the motorcycle, it was not subject to seizure. We do not agree.

The VIN number assigned to this motorcycle by the DOT was 19257276. Based on the credible testimony in the record, this number did not match the make of the vehicle and it was not placed on the motorcycle in accordance with the law and therefore cannot be the basis for concluding that the

vehicle was improperly forfeited. Thistle admitted that he personally stamped this number on the engine casing. Our statutes provide that an “identification number” is either “numbered by the manufacturer” or “the department shall assign a new identification number.” *See* § 342.30(1m), STATS. When the latter procedure is used with respect to motorcycles, the number assigned “shall be stamped on the left side, near the top of the engine casing” and “shall be done under the supervision of a dealer, distributor or manufacturer ... or under the supervision of a peace officer. The person supervising the stamping ... shall make a report thereof to the department.” *See* § 342.30(2), STATS.

The VIN number on Depies’s cycle did not match the make of the cycle, nor was it affixed to the cycle in accordance with the law. Therefore, we reject Depies’s first claim that the existence of this VIN number precludes forfeiture of the motorcycle.

Depies next claims that the State failed to satisfy its burden of proving that the motorcycle was contraband. Again, we disagree.

Simet, who was qualified as an expert witness “in stolen motorcycles, in the modus operandi of stealing those motorcycles and switching parts, as particularly to Harley Davidson and STD parts,” provided sufficient evidence to conclude that the State satisfied its burden in proving that the motorcycle was subject to forfeiture. Simet testified that the VIN number assigned to the motorcycle was inconsistent with the motorcycle and should not be used on that cycle. The VIN indicated the vehicle was a STD, but the cycle appeared to be a Harley Davidson. He indicated that a VIN for a Harley should have included a number, followed by a letter (designating the model style), followed by five numbers, followed by either an “H” or a “J,” and ending with a

number zero through nine to indicate the year of the bike. He indicated that the VIN was not consistent with a “homemade” cycle either because a homemade vehicle VIN would be five numbers followed by “WIS.” Simet testified that the manufacturer’s identification number on the frame of motorcycle “had been ground off and completely removed,” and the number stamped on the engine was not consistent with the way STD puts on a number.

Simet testified that based on the frame and other factors, the cycle was a late 1970’s model Harley Davidson motorcycle. He further explained that Harley places a secondary identification number on the front fork assembly, which had also been welded over and ground off Depies’s cycle.

He concluded, based on his experience and training, that “the only logical reasons that anyone [destroys identifications numbers] is to hide and conceal the identity of a stolen motorcycle.” Simet concluded that this motorcycle was a stolen vehicle or contained stolen vehicle parts because every single one of the identifying numbers had been obliterated and great care was exercised to make sure that every possible number was destroyed. He explained that to remove certain of the numbers would have required that part of the engine be dismantled to get at the number to obliterate it. He testified that the only reason for such conduct is to “destroy the identity of the bike.”

This testimony, together with the presumption in § 342.30(4)(a), STATS., that when an identification number cannot be deciphered, the seized

vehicle is presumed to be contraband, provides ample evidence to support the trial court's conclusion that the State satisfied its burden of proof in this case.¹

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ We are not persuaded by Depies's claim that the general forfeiture statute, § 973.076, STATS., requires the State to prove that any vehicle forfeited pursuant to § 342.30(4)(a), STATS., can only be forfeited if the vehicle was used to transport property or a weapon used in a felony or certain other enumerated offenses. See § 973.075(1)(b), STATS. This interpretation of the interrelationship between §§ 342.30(4)(a) and 973.076 would violate rules of statutory construction which require us to construe interrelated statutes to produce a harmonious whole. See *State v. Dawson*, 195 Wis.2d 161, 168 n.2, 536 N.W.2d 119, 121 n.2 (Ct. App. 1995). Section 973.076(3), STATS., requires the State to prove that the property is subject to forfeiture under §§ 973.075 to 973.077, STATS. Section 973.075(1)(a), STATS., provides that property derived "directly or indirectly from or realized through the commission of any crime" is subject to forfeiture. Here, the motorcycle or its parts were contraband—stolen property. Therefore, the property was derived from the commission of a crime and the State satisfied its burden in accordance with the statutes.

